

## Small Business Administration

## § 120.1706

until SBA reviews and approves the Pool Loan for such purpose. Copies of Pool Loan documents related to underwriting and origination, and any other Pool Loan-related documents SBA may, in its sole discretion, request to review in writing, must be sent to SBA's Sacramento Pool Loan Processing Center. The Pool Originator must identify and SBA must review Pool Loan documents before a Loan Interest is added to a Pool if:

(1) The Pool Loan is to a business within NAICS code 713940 covering Fitness and Recreational Sports Centers; (If SBA determines that a Pool Loan has had any of its proceeds used for any of the restricted purposes listed above, the Pool Loan will be prohibited from being part of a Pool.)

(2) The Pool Loan was part of a 504 financing involving a 504 loan that was processed under SBA's Premier Certified Lenders Program; or

(3) The Project the Pool Loan financed included the refinancing of existing debt owed to the Seller or Third Party Lender (not including interim financing associated with the Project).

### § 120.1705 Pool formation requirements.

(a) *Initiation of Pool formation.* Only an entity approved by SBA to be a Pool Originator under the Program that continues to qualify to be a Pool Originator pursuant to this subpart may initiate the formation of a Pool. The Pool Originator creates the Pool subject to Program Rules and Regulations, including the parameters set forth in the Guide, and SBA approval.

(b) *Adjustment of Pool requirements.* SBA may adjust the Pool characteristics periodically based on program experience and market conditions and will publish a revised version of the Guide in the FEDERAL REGISTER to implement such adjustments. Any such adjustments shall not affect Pools formed prior to the adjustment.

(c) *When the Pool Originator is the Seller.* When a Pool Originator proposes to form a Pool involving a Pool Loan it owns, it must execute the First Lien Position 504 Loan Pool Guarantee Agreement as Pool Originator and as Seller and, consequently, will be subject to all applicable Program Rules

and Regulations pertaining to both roles.

(d) *When the Pool Originator does not own the Pool Loan.* When a Pool Originator proposes to form a Pool involving a Pool Loan it does not own, it must purchase the Loan Interest it proposes to pool from a Seller that owns the whole Pool Loan and that has the servicing rights. The Pool Originator must purchase the Loan Interest and take it into inventory or settle the purchase of the Loan Interest through the CSA concurrently with the formation of the Pool. The entity selling the Loan Interest to the Pool Originator must execute the First Lien Position 504 Loan Pool Guarantee Agreement as Seller and, consequently, will be subject to all applicable Program Rules and Regulations pertaining to a Seller. The Pool Originator must also execute the First Lien Position 504 Loan Pool Guaranty Agreement.

(e) *What CSA must receive prior to Pool formation.* Before the CSA may carry out its responsibilities relating to the formation of a Pool, it must receive:

(1) From the Pool Originator: A properly completed First Lien Position 504 Loan Pool application form, First Lien Position 504 Loan Guarantee Agreement, and any other documentation which SBA may require, if applicable; and

(2) All cost reimbursement due and payable to the CSA prior to Pool formation owed by the Participants participating in the formation of the Pool.

### § 120.1706 Pool Originator's retained interest in Pool.

The Pool Originator must retain an ownership interest in any Pool it has formed that is equal to at least 5% of the aggregate of the total outstanding principal balance of each Pool Loan with a Loan Interest in the Pool as calculated at the time of Pool formation. Such interest will decline with Loan Interest payments, prepayments, defaults and any other early termination. At Pool formation, the CSA will issue the Pool Originator a Pool Originator Receipt evidencing the Pool Originator's retained interest in the Pool. The Pool Originator may not sell, pledge, participate, or otherwise transfer its